IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 2399 of 2007()

AGAINST THE ORDER DATED 12/07/2007 IN MC.717/2006 IN CMP.623/2007 of FAMILY COURT, MALAPPURAM

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PETITIONER: PETITIONER

M.P.SURESH, S/O. NEELAKANDAN,
"RATHEESH NIVAS", MELEPUTHIYA PARAMBU,
ATHIYURKUNNU PO,
VELLARA, KOTTAPPURAM, MALAPPURAM.

BY ADV. SRI.SIBY MATHEW
SRI.PHILIP J.VETTICKATTU

RESPONDENTS: RESPONDENT/STATE

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1. DEVAYANI A.K., D/O. A.K.NAGAN,
BABU NIVAS, KOTTAKKUNNU,ERUVETTI P.O.,
CHENGARA, KAVANNUR, ERANADU, MALAPPURAM.

2. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2399 of 2007

Dated this the 26th day of July 2007

O R D E R

Against the petitioner, an ex-parte order under Section 125 Cr.P.C has been passed. He is directed to pay an amount of Rs.2,000/- per mensum to his wife. He is aged 27 years and his wife is aged 21 years. He claims to be a coolie by profession. The ex-parte order was passed as there was no appearance in spite of due service of notice. The petitioner went before the Family Court with an application to set aside the ex-parte order. He built up an interesting story that a police man of the local police station had deceived him to sign many papers which included the notice of the M.C from the Family Court. No evidence whatsoever was adduced before the learned Judge of the Family Court. The application was opposed. The learned Judge of the Family Court, in spite of the above circumstances, indulgently took the view that the petitioner can be given an opportunity to contest the proceedings. Accordingly the impugned order was passed directing that the order shall stand set aside on condition that the amount payable under the impugned order till now was paid and discharged. As on the

date of the said order i.e 12/7/2007, about an amount of Rs.14,000/- is payable. The petitioner has come to this court with the prayer that the impugned order is unjust and the same may be set aside.

2. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. It is an extraordinary inherent jurisdiction which is sought to be invoked. Such jurisdiction is not to be invoked, as a matter of course. Satisfactory and compelling reasons must be shown to exist to justify such invocation. Even errors in law or on facts or in the exercise of discretions committed by a subordinate court will not ipso facto persuade this court to invoke the jurisdiction. The mantra which the courts have to follow while considering the invocation of Section 482 Cr.P.C is whether there is failure or miscarriage of justice and whether there is abuse of the process of court. Those are not vices which I can discover in the impugned order. I am certainly of the opinion that it is not necessary to invoke the powers under Section 482 Cr.P.C against the impugned order.

3. The learned counsel for the petitioner finally submits that some further time may be granted to the petitioner to make the payment. I am satisfied that even without notice to the

respondent such indulgence can be shown to the petitioner.

4. In the result, this petition is allowed in part and it is directed that if he petitioner would pay an amount of Rs.16,000/- (Rupees sixteen thousand only) on or before 04/09/2007, the learned Judge of the Family Court shall reckon that as sufficient compliance of the direction in the impugned order and shall set aside the ex-parte order under Section 125 Cr.P.C. The amount paid can be released to the claimant and shall be liable to be adjusted towards such liability that may eventually fixed and decided by the learned Judge of the Family Court.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007